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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 757

FRANK DELAY, HARRY ARNOLD (TRUE NAME HENRY ARMEL),

Appellants,

vs.

PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

STATEMENT AS TO JURISDICTION

EDWARD S. SHATTUCK,
Counsel for Appellants.

GUTHRIE, DARLING & SHATTUCK,
SALISBURY & KNUDSON,
Of Counsel.

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES, APPELLATE DEPARTMENT

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
vs.
FRANK DELAY, HARRY ARNOLD (TRUE NAME HENRY ARMEL),
Defendants and Appellants

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, defendants-appellants submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the Superior Court of the State of California entered in this cause.

Opinion Below

There is no formal written opinion by the Appellate Department of the Superior Court of the State of California in and for the County of Los Angeles in this case. A decision by the said court was expressly postponed pending the decision of the Supreme Court of the State of California in the case of *Serve Yourself Gasoline Stations Association, Inc., et al.*, v. *Brock, et al.*, which decision upholds the statutes under consideration in this appeal and which was rendered on October 31, 1952, and is reported in 39 Cali-

fornia, 829. Said opinion is attached hereto as Appendix A. In affirming the judgment of the trial court in this action the above court expressly incorporated the above cited opinion of the Supreme Court of California. It must be noted that there is no higher court to which further appeal may be made after a judgment of the Appellate Department of the Superior Court has been rendered in cases where that court has jurisdiction.

Jurisdiction

The judgment of the Superior Court, Appellate Department, was entered on December 18, 1952. A petition for appeal is presented to that court herewith, to wit, as of March 16, 1953.

The defendants-appellants herein were convicted of violating Section 20880(b) of the Business and Professions Code of the State of California by the Justice Court of El Monte Township, and sentence was imposed. The above court affirmed the judgment of conviction. The jurisdiction of the Supreme Court to review this decision is conferred by Title 28, United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Charleston Federal Savings & Loan Association* v. *Alderson*, 324 U. S. 182; *James Stewart & Co.* v. *Sadrakula*, 309 U. S. 94; *Western Turf Association* v. *Greenberg*, 204 U. S. 359.

In satisfaction of Rule 12(1) of the Rules of the United States Supreme Court appellants call to the court's attention the fact that the unconstitutionality of the statutes in issue herein was first raised by demurrer to the complaint charging defendants-appellants with violation of said statutes. The demurrer was overruled and the matter tried. After conviction and on appeal to the above court, defendants-appellants' only two contentions were that the statutes

were unconstitutional and were being unconstitutionally applied to these defendants, in violation of the Fourteenth Amendment to the Federal Constitution. The judgment of the court affirmed the conviction without a written opinion, hence sustaining the validity of the statutes.

Questions Presented

Is a state statute under which a retail gasoline dealer may be convinced and ordered confined for maintaining a truthful sign on his premises which reads "Serve Yourself and Save", an unconstitutional statute which deprives the dealer of a valuable property right and his personal freedom without due process of law?

Statutes Involved

Sections 20880, 20881, 20882, 20883, 20884, 20885, 20886 and 20888 of the Business and Professions Code of the State of California are set forth in Exhibit B hereto.

Statement

Defendants were charged in a complaint dated June 6, 1951, in five counts of violating section 20880(b) of the Business and Professions Code of the State of California. The specific charge was that defendants, while offering for sale and selling gasoline from a place of business displayed a sign reading "Serve Yourself and Save", all in violation of the statute. They were arraigned and allowed to plead on June 19, 1951, at which time their demurrer to the complaint on the ground that the statute cited was unconstitutional, was overruled. Defendants pleaded not guilty, but were found by the court, jury having been waived, to be guilty on all counts. The defendants were ordered confined in the Los Angeles County Jail for the term of 90 days, but the sentence was suspended and the defendants placed on probation for one year.

Defendants thereupon appealed to the Appellate Department of the Superior Court of Los Angeles County, urging a reversal on the ground that the statute under which they were convicted was unconstitutional and deprived them of their liberty and property without due process of law. The appellate court delayed a decision in the matter pending a decision by the State Supreme Court construing the same statute. That decision was rendered in *Serve Yourself Gasoline Station Association* v. *Brock*, 39 Advance California 829, 249 P(2d) 545, declaring the statute constitutional. The above court, Appellate Department, then affirmed the judgment of conviction and by reference expressly incorporated the opinion of the State Supreme Court. An appeal from the judgment of the State Supreme Court was, on January 29, 1953, allowed by the United States Supreme Court and is now pending therein.

The Questions Are Substantial

It is difficult to conjecture a situation more earnestly requiring an examination by the Supreme Court of the United States than the one presented by the case at bar. The statutes sought to be reviewed here are nefarious enough in that they operate as a barrier to free competition in the retail gasoline industry. When it is also shown that the violator, in his pursuit of a livelihood in a competitive market may be jailed for engaging in truthful advertising, the statutes are doubly offensive. These statutes were enacted under the guise of the police power of the State to curb so-called "untruthful and misleading advertising." That the State has such power appellants do not question. However, there is a limit to which that power may go, and when it takes a person's property and deprives him of his liberty without due process that limit has been exceeded. The limit beyond which such legislation must not pass is

this: it may be invoked only when the public health, safety, convenience or welfare is or may be jeopardized. An extension beyond that limit constitutes restrictive and unwarranted regulation of the private rights of persons.

That the application of the statutes to the situation before constitutes an unconstitutional extension of the police power is evidenced by the fact that here, by stipulation, the sign "Serve Yourself and Save" is an admittedly truthful sign. All parties agree that by serving yourself in appellants' station you can save money—the cost of maintaining an attendant. Yet by maintaining this sign in an attempt to advertise a bargain, the appellants were arrested and convicted. It is difficult to see how the public health, morals or welfare is offended by being allowed to know that it may save money by engaging in a little manual labor.

The real answer to the question of why these statutes were enacted is pointed out graphically by the circumstance of their enaction. They were hurriedly enacted by the 1949 Legislature in an attempt to curb the fast growing Serve Yourself industry. As was stated by the court in *State* v. *Miller*, 12 A.(2d) 192, the real purpose was to stifle competition. The "Serve Yourself" type retail business is an infant one, but has caught the fancy of the buying public. The people want this type of operation, yet statutes of this nature would snuff out the life of the industry in its incipient stages. This court has held that the gasoline industry is not affected with a public interest. (*William* v. *Standard Oil Co. of Louisiana*, 278 U.S. 235). In spite of this ruling the Legislature of the State of California has by the statutes in question first attributed a veil of "public interest" to the industry and then has proceeded to legislate a vital segment of that industry out of business. The principal asset of the Serve Yourself Stations is the sign or slogan which identifies and distinguishes them from all other fill-

ing stations. The statutes say that this sign is a "price" sign and must therefore bear the names of all brands of fuel sold and the price per gallon in words as large as the slogan itself. This burdensome requirement demands a sign so large as to be financially prohibitive to build. Since the dealer can no longer proclaim that he is offering a special service, this goodwill and valuable property right is arbitrarily taken from him.

These factors would seemingly be enough to point out the invalidity of the statutes. However, the most deleterious aspect of the situation created by this legislation is that it makes a criminal out of a retailer whose sign does not comply precisely with the statute. It causes a dealer to be arrested and convicted and imprisoned if he dares truthfully proclaim that by trading at his station the individual who pumps his own gasoline may save a few cents. The Supreme Court of the United States is the final bulwark against the abuse created by the statutes here involved.

There are at present conflicting decisions in courts in four states involving legislation of this type. Unless this court takes jurisdiction of the case at bar and lends some element of sanction and finality to one or the other line of decisions, great unrest and confusion will remain in the retail gasoline industry. Appellants earnestly pray that the Supreme Court of the United States take jurisdiction of the above matter and reverse the decision of the Appellate Department of the Superior Court of the State of California in and for the County of Los Angeles.

Respectfully submitted,

EDWARD S. SHATTUCK,
Counsel for Petitioners

GUTHRIE, DARLING & SHATTUCK
SALISBURY & KNUDSON,
Of Counsel

APPENDIX "A"

SUPREME COURT OF CALIFORNIA, IN BANK

SERVE YOURSELF GASOLINE STATIONS ASSN., INC., ET AL.,

v.

BROCK ET AL.

L. A. 21968.

Oct. 31, 1952.

Action by owners and operators of self service gasoline stations against Director of the Department of Agriculture for judgment declaring that provisions of Business and Professions Code regulating price advertising on or near gasoline stations were unconstitutional and inapplicable to plaintiff's price signs. The Superior Court, Los Angeles County, Julius V. Patrosso, J., rendered judgment for defendant, and plaintiffs appealed. The Supreme Court, Spence, J., held that although the right to advertise is a property right, the requirement of full disclosure of price and brand name was a reasonable method of regulating gasoline advertising, and statutes requiring that gasoline price signs set forth in detail and in lettering as large as other lettering thereon the total price of the gasoline including tax and grade have a reasonable and substantial relation to the legitimate objective of the police power.

Judgment affirmed.

Prior opinion, 211 P.2d 593.

1. Constitutional Law—48, 81

In testing propriety of legislation as an exercise of the police power, the court is limited to determining whether the subject of the legislation is within the state's power, and, if so, whether means adopted to accomplish the result are reasonably designed for that purpose and have a real and substantial relation to the objects sought to be attained, and it must be presumed at the outset that the Legislature acted within its power.

2. Constitutional Law—48

The burden is upon those attacking a statute to make a showing that the statute is unconstitutional.

3. Trade-Marks and Trade-Names and Unfair Competition —68(2.13)

Primary purpose of legislation regulating gasoline service stations price signs was the prevention of misleading advertising. Business and Professions Code, §§ 20880, 20882, 20883-20886; Const. art. 4, § 25, subd. 33.

4. Trade-Marks and Trade-Names and Unfair Competition —68(2.1)

The prevention of misleading advertising is a purpose which is a proper subject for the exercise of the police power.

5. Constitutional Law—81

Although the Legislature may be denied the power to destroy a given right, it has the authority to regulate its exercise.

6. Trade-Marks and Trade-Names and Unfair Competition —68(2.13)

Legislation regulating gasoline service station price signs did not deal with price-fixing and did not affect the ultimate right to advertise price. Business and Professions Code, §§ 20880, 20882, 20883-20886; Const. art. 4, § 25, subd. 33.

7. Trade-Marks and Trade-Names and Unfair Competition —68(2.2)

Although right to advertise is a property right, the requirement of full disclosure of price and brand name is a reasonable method of regulating gasoline advertising, and statutes requiring that gasoline price signs set forth in detail and in lettering large as other lettering thereon, the total price of the gasoline, including tax and grade, have a real and substantial relation to the legitimate objectives of the police power. Business and Professions Code, §§ 20880, 20882, 20883-20886; Const. art. 4, § 25, subd. 33.

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8. Constitutional Law—296(1)

Trade-Marks and Trade-Names and Unfair Competition —68(2.2)

Statute requiring that gasoline price signs set forth in detail and in lettering as large as other lettering thereon, the total price of the gasoline, including tax and grade, did not become oppressive or confiscatory by reason of fact that it might be more costly to conform to its requirements. Business and Professions Code, §§ 20880, 20882, 20883-20886; Const. art. 4, § 25, subd. 33.

9. Constitutional Law—70(3)

In considering whether statute requiring that gasoline price signs set forth in detail and in lettering as large as other lettering thereon, the total price of the gasoline, including tax and grade, was constitutional, Supreme Court could not consider contention that the statute represented an arbitrary attempt to eliminate competition in the retail selling of gasoline. Business and Professions Code, §§ 20880, 20882, 20883-20886; Const. art. 4, § 25, subd. 33.

10. Constitutional Law—70(3)

It is not the function of the Supreme Court to search for motive in testing the constitutionality of a statute.

11. Trade-Marks and Trade-Names and Unfair Competition —68(2.2)

The Legislature being, in the first instance, the judge of what is necessary for public welfare, a statute regulating gasoline price signs could not be considered invalid in absence of showing of arbitrary interference with property rights or of the lack of a substantial relation between the means and a legitimate subject for regulation. Business and Professions Code, §§ 20880, 20882, 20883-20886; Const. art. 4, § 25, subd. 33.

12. Statutes—76(1)

The question whether a general law can be made applicable is one for the Legislature to be determined in the light of the evil intended to be avoided. Const. art. 4, § 25, subd. 33.

13. Constitutional Law—45

The determination of the Legislature as to whether a general law can be made applicable cannot be interfered with by the Supreme Court unless the disregard of the constitutional requirement is clear and palpable. Const. art. 4, § 25, subd. 33.

14. Statutes—76(1)

Provision of Business and Professions Code prohibiting false and misleading advertising in general could not be applied to require a full disclosure of price or brand name of gasoline offered for sale, and, hence, statute regulating gasoline price signs was not a special law, violative of constitution as unnecessary because a general law could be applicable. Business and Professions Code, §§ 17500, 20880, 20882, 20883-20886; Const. art. 4, § 25, subd. 33.

15. Statutes—77(1)

The constitutional prohibition against special legislation does not preclude legislative classification, but only requires that the classification be reasonable. Const. art. 4, § 25, subd. 33.

16. Statutes—77(1)

The application of legislation regulating advertising signs to all persons engaged in the business of selling gasoline constituted a reasonable classification within the constitutional limitation upon special legislation. Business and Professions Code, §§ 20880, 20882, 20883-20886; Const. art. 4, § 25, subd. 33.

17. Constitutional Law—48

In considering the validity as special legislation of statutes regulating use of advertising signs by persons engaged in business of selling gasoline, it would be presumed that the Legislature had made a careful investigation in the field and that it had properly determined that the interests of the public required such regulation. Business and Professions Code, §§ 20880, 20882, 20883-20886; Const. art. 4, § 25, subd. 33.

Guthrie, Darling & Shattuck, Milo V. Olson, Edward S.

Shattuck and Salisbury & Knudson, Los Angeles, for appellants.

Edmund G. Brown, Atty. Gen., and John F. Hassler, Jr., *Deputy Atty. Gen., for respondents.*

SPENCE, *Justice:*

Plaintiffs and intervenors, owners and operators of self service gasoline stations, appeal from a judgment declaring that sections 20880, 20882, 20883, 20884, 20885 and 20886 of the Business and Professions Code, regulating price advertising on or near gasoline stations, are constitutional and are applicable to plaintiffs' price signs.

Appellants contend that the sections in question involve an improper exercise of the police power, depriving them of their property without due process of law. It is further contended that these sections violate Article IV, Section 25, subdivision 33 of the California Constitution in that they constitute a special law that is unnecessary because a general law, Bus. & Prof. Code § 17500, is and can be made applicable. We have concluded that this regulation of price advertising is a proper exercise of the police power and that the judgment must be affirmed.

The sections in question[1] require price signs, other than price signs on the gasoline dispensing apparatus, Bus. &

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[1] § 20880. "(a) No person shall keep, maintain or display on or near the premises of any place of business in this State any advertising medium, which indicates or shows or advertises the price of gasoline or other motor vehicle fuel sold, offered for sale or advertised for sale from such premises, unless the actual price per gallon of gasoline or other motor vehicle fuel, including taxes, is also shown on such advertising medium, together with the word or words 'gasoline' or 'motor fuel' and the trade name or brand of the gasoline or other motor vehicle fuel product advertised for sale by such advertising medium.

"(b) No person offering for sale or selling any gasoline or motor vehicle fuel from any place of business in the State of California shall post or display a sign or statement or other advertising medium reading, in substance, 'save' a designated amount, or a designated amount per gallon, such as 'save 5 cents' or 'save 5 cents per gallon,' or using the expression 'off' a designated amount, such as '5 cents off' or '5 cents less,' or 'discount' of a given amount, such as '5 cents discount,' or otherwise using the words 'save,' 'off,' 'discount,' 'less,' 'below,' or any of them, or a word or words of similar meaning or other phraseology indicating a reduced price, unless there is posted and displayed in letters of equal size and as part of the

Prof. Code §§ 20820-20826, to set forth in detail and in lettering as large as other lettering thereon, the total price of the gasoline, including tax and grade. Signs using the words "save," "off," "discount," "less," "below," or words of similar meaning are considered price signs. The signs employed by appellants and others in the business of owning or operating gasoline stations use thereon the words "Save," "Serve Yourself and Save," and "Save 5," followed by small lettered words "cents," "ways," "minutes," or minor

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same sign, statement, or other advertising medium, the total price, including all taxes, at which gasoline or motor vehicle fuel is being sold or offered for sale, designating the price for each brand or trade name of gasoline or motor vehicle fuel being sold or offered for sale.

"The size of the letters, words, figures or numerals used for the purpose of indicating or showing the total price per gallon, including all taxes, shall be of a size as provided under the provisions of Section 20883 of this article.

"(c) Nothing in this article shall be construed to apply to the price signs referred to in Article 6 of this chapter."

§ 20882. "All letters, figures or numerals used in designating the brand name or words 'no brand' in any advertising medium referred to in this article, shall be of uniform size and at least six inches in height and the height shall not be more than twice the dimension of the width of each such letter, figure or numeral."

§ 20883. "All letters, words, figures or numerals used on the advertising medium referred to in this article for the purpose of indicating or showing prices of gasoline or other motor vehicle fuel sold or advertised for sale shall be uniform in size and shall be not more than twice the size of the letters, figures or numerals used to designate the brand name, or the words 'no brand.'"

§ 20884. "The advertising medium referred to in this article shall not contain any other advertising matter whatsoever, except words of description of the product sold or offered for sale, and if words of description of the product offered for sale or advertised for sale by any such sign are used, the letters, figures or numerals which form any words, marks, letters, figures or numerals of description shall not be larger than the words, marks, letters, figures or numerals used in forming or designating the brand name or the words 'no brand.'"

§ 20885. "For the purpose of this article, fractions are considered one numeral."

§ 20886. "The numeral one or the letter 'I' need not conform to specifications prescribed for other letters, words, figures or numerals by this article but all letters, words, figures or numerals shall be the same type and design and shall be uniform with other letters, words, figures or numerals with which they are used."

variations of the same. Many of said signs do not refer to the name nor state the price of the gasoline offered for sale.

[1, 2] In review legislation for the purpose of testing its propriety as an exercise of the police power, "[t]he power of the court is limited to determining whether the subject of the legislation is within the state's power, and, if so, to determine whether the means adopted to accomplish the results are reasonably designed for that purpose, and have a real and substantial relation to the objects sought to be attained." Max Factor & Co. v. Kunsman, 5 Cal.2d 446, 456, 55 P.2d 177, 181. Furthermore, it must be presumed at the outset that the Legislature acted within its powers. Hart v. City of Beverly Hills, 11 Cal.2d 343, 348, 79 P.2d 1080. The burden is upon those attacking the statute to make a showing that the statute is unconstitutional.

[3, 4] With this brief statement of the governing principles, we turn to the legislation at hand. It is apparent upon its face that the primary purpose of this legislation is the prevention of misleading advertising, which purpose has long been deemed a proper subject for the exercise of the police power. Note, Am.Cas.1916 A, 900; 89 A.L.R. 1004; 2 Cal.Jur.2d 606; and 11 Am.Jur., Constitutional Law, § 283, p. 1043. See also Hart v. City of Beverly Hills, supra, 11 Cal.2d 343, 350, 79 P.2d 1080; In re Sidebotham, 12 Cal.2d 434, 436, 85 P.2d 453; and In re McNeal, 32 Cal.App.2d 391, 394, 89 P. 2d 1096.

[5, 6] The next step is the consideration of the means employed by the Legislature to reach this legitimate end. These involve primarily the requirement of full disclosure, a method approved in In re Sidebotham, supra, 12 Cal.2d 434, 436, 85 P.2d 453. To demonstrate the unconstitutionality of these statutes, appellants cite and rely upon a series of cases declaring statutes unconstitutional which prohibit all price advertising on or near gasoline stations except those signs of a limited size permitted on the pumps. Regal Oil Co. v. State, 123 N.J.L. 456, 10 A.2d 495; State v. Miller, 126 Conn. 373, 12 A.2d 192; and Levy v. City of Pontiac, 331 Mich. 100, 49 N.W.2d 80. But cf., Merit Oil Co. v. Director of Division of Necessaries of Life, 319 Mass. 301, 65 N.E.2d 529; People v. Arlen Service Stations, 284 N.Y. 340, 31 N.E.

2d 184; and State v. Hobson, Del., 83 A.2d 846. However, the legislation under consideration here differs substantially from that involved in the above cases. There the right to maintain signs of a sufficient size to be read by a passing motorist was prohibited. Our statutes do not prohibit effective advertising in this sense. Rather, sections 20882 and 20883 of the Business and Professions Code encourage the same by establishing minimum requirements as to size of lettering on the signs, thereby making more certain that the passing motorist can read them. The difference is of significance. The ultimate right to advertise price is unaffected by our statutes. Although the Legislature may be denied the power to destroy a given right, the authority to regulate its exercise is recognized. See Hart v. City of Beverly Hills, supra, 11 Cal.2d 343, 350, 79 P.2d 1080, and cases cited therein.

The decision of the United States Supreme Court in Williams v. Standard Oil Co., 278 U. S. 235, 49 S.Ct. 115, 116, 73 L.Ed. 287, is not a barrier to this legislation. There it was held that a state could not fix the price of gasoline for the reason that the business of selling gasoline is not one "affected with a public interest." But regardless of the standard by which the validity of price-fixing legislation should be tested, Tyson & Brother United Theatre Ticket Offices v. Banton, 273 U.S. 418, 430, 47 S.Ct. 426, 71 L.Ed. 718; See Nebbia v. New York, 291 U.S. 502, 54 S.Ct. 505, 78 L. Ed. 940; and Olsen v. State of Nebraska ex rel. Western Reference & Bond Ass'n, 313 U.S. 236, 61 S.Ct. 862, 85 L.Ed. 1305, the statutes in question do not deal with price-fixing and the Williams case is not controlling here.

[7, 8] Although the right to advertise is a property right, People v. St. John, 108 Cal.App.Supp. 779, 288 P. 53, the requirement of full disclosure of price and brand name is a reasonable method of regulating gasoline advertising, and the statutes have a real and substantial relation to legitimate objectives of the police power. The law does not become oppressive or confiscatory by reason of the fact that it may be more costly to conform to its requirements.

[9, 10] Nor is there any merit in the contention that this legislation represents an arbitrary attempt to eliminate

competition in the retail selling of gasoline. It is not our function to search for motive in testing the constitutionality of a statute. Daniel v. Family Security Life Ins. Co., 336 U.S. 220, 224, 69, S.Ct. 550, 93 L.Ed. 632.

[11] There can be no doubt that many gasoline price signs are misleading. When a motorist on the highway sees a sign which states in large letters "Save 5" or "5 Off," he can reasonably assume that he will save 5 cents per gallon below the price of gasoline sold in conventional service stations. And when these words are followed by the words "minutes," "ways," or the like, in small letters, the signs are highly misleading. Appellants do not argue at great length that the regulation of such signs is a violation of due process. Rather, they argue that the statute would be unconstitutionally applied if enforced against the sign "Serve Yourself and Save." Brock v. Superior Court, 12 Cal.2d 605, 610, 86 P.2d 805. Respondents have indicated an intent to so enforce the statute. While it is generally true that the motorist can realize a saving in the self service type station, and that this sign is therefore literally true, we cannot agree that the application of the requirement of full disclosure of price and brand name will violate due process of law. The convenience to the motoring public in having the price per gallon plainly disclosed where there is a representation that a saving can be made may well have been a real consideration of the Legislature in enacting the statutes. The Legislature, in the first instance, is the judge of what is necessary for the public welfare, and, in the absence of a showing of arbitrary interference with property rights or of the lack of a substantial relation between means and a legitimate subject for regulation, we can not declare this legislation invalid.

The final contention that this statute violates Article IV, Section 25, subdivision 33 of the California Constitution is likewise without merit. This section states: "The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: In all other cases where a general law can be made applicable."

[12, 13] The question whether a general law can be made applicable is one for the Legislature, "to be determined in

the light of the evils intended to be avoided, and with its determination upon that question we may not interfere unless the disregard of the constitutional requirement is clear and palpable." People v. Mullender, 132 Cal. 217, 221, 64 P. 299, 301; Accord: Wheeler v. Herbert, 152 Cal. 224, 232, 92, P. 353; Matter of Petition of Burke, 160 Cal. 300, 302-303, 116 P. 755; and Ventura County Harbor Dist. v. Board of Supervisors, 211 Cal. 271, 276-277, 295, P. 6. There is no disregard of the constitutional requirement here. To the contrary, it is apparent that section 17500 of the Business and Professions Code, which prohibits false or misleading advertising in general, could not be applied to require a full disclosure of price or brand name of gasoline offered for sale.

[14-17] The distinction between a general and a special law within the meaning of the Constitution has been stated as follows: "[A law] is general * * * when it applies equally to all persons embraced in a class founded upon some natural or intrinsic or constitutional distinction * * * [It is a special law] if it confers particular privileges, or imposes peculiar disabilities or burdensome conditions in the exercise of a common right, upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law." City of Pasadena v. Stimson, 91 Cal. 238, 251-252, 27 P. 604, 607. It is therefore clear that the constitutional prohibition against special legislation does not preclude legislative classification, but only requires that the classification be reasonable. See People v. Western Fruit Growers, 22 Cal. 2d 494, 506, 140 P.2d 13, and case cited therein. Here, the legislation applies equally to all persons engaged in the business of selling gasoline. The classification is a reasonable one. Gasoline is a unique commodity in that few people, if any, can distinguish between grades or brands by the use of the senses. Unlike many other commodities, its sale is final in the sense that there is no practical way for the motorist to return or exchange the purchased commodity, if dissatisfied. Price and brand name are the principal factors in its sale, and therefore, advertising of these elements in a misleading manner is peculiarly subject to abuse. Furthermore, it must be presumed that the Legislature has made a careful

investigation in the field, and that it has properly determined that the interests of the public require this regulation. Pacific Coast Dairy v. Police Court, 214 Cal. 668, 674, 8 P.2d 140 80 A.L.R. 1217. No showing to the contrary has been made.

The judgment is affirmed.

GIBSON, C. J., and SHENK, CARTER, TRAYNOR, and SCHAUER, JJ., and McCOMB, J. pro tem., concur.

DOTY v. LACEY, et al.

Civ. 19022.

District Court of Appeals, Second District, Division 3, California

Action by employee of owner of oil field equipment which trucking company had contracted to load and move for injuries sustained when boom of crane furnished by independent contractor at trucking company's request collapsed while lifting a heavy piece of equipment. The Superior Court of Los Angeles County, Henry W. Willis, J., entered judgment on a directed verdict in favor of trucking company and independent contractor, and plaintiff appealed. The District Court of Appeal, Vallée, J., held that the evidence required submission of case to jury on questions of whether operator of crane remained in general employment of independent contractor so that contractor would be liable for negligent operation of crane and whether trucking company's foreman on the job was also guilty of negligence which constituted a proximate cause of injury.

Judgment reversed.

1. Master and Servant—316(1)

Owner of mobile crane, which with operator and driver was hired by trucking company to load oil field equipment which trucking company had agreed with owner of equipment to load and move, was an "independent contractor" liable for negligent operation of crane, unless crane operator

became a special employee of owner of equipment. Labor Code, § 3353.

See publication Words and Phrases, for other judicial constructions and definitions of "Independent Contractor."

2. Master and Servant—330(1)

Where an employer lends the services of an employee to a hirer for operation of an instrumentality owned by employer to perform such work as hirer directs without, however, relinquishing to hirer the power to discharge such employee, the legal inference is that such employee as operator of the instrumentality remains, in absence of agreement to the contrary, the employee of owner of instrumentality alone in so far as the manner and method of operating the instrumentality is concerned, and owner and not hirer of the instrumentality is liable for negligence of such employee.

3. Master and Servant—330(1)

An inference exists, in absence of evidence to the contrary, that an employee remains in his general employment so long as by the services rendered another he is performing the business entrusted to him by general employer, and fact that general employer has permitted a division of control does not raise an inference that he has surrendered such control.

APPENDIX "B"

Business & Professions Code

§ 20880. (a) No person shall keep, maintain or display on or near the premises of any place of business in this State any advertising medium, which indicates or shows or advertises the price of gasoline or other motor vehicle fuel sold, offered for sale or advertised for sale from such premises, unless the actual price per gallon of gasoline or other motor vehicle fuel, including taxes, is also shown on such advertising medium, together with the word or words "gasoline" or "motor fuel" and the trade name or brand of the gaso-

line or other motor vehicle fuel product advertised for sale by such advertising medium.

(b) No person offering for sale or selling any gasoline or motor vehicle fuel from any place of business in the State of California shall post or display a sign or statement or other advertising medium reading, in substance, "save" a designated amount, or a designated amount per gallon, such as "save 5 cents" or "save 5 cents per gallon," or using the expression "off" a designated amount, such as "5 cents off" or "5 cents less," or "discount" of a given amount, such as "5 cents discount," or otherwise using the words "save," "off," "discount," "less," "below," or any of them, or a word or words of similar meaning or other phraseology indicating a reduced price, unless there is posted and displayed in letters of equal size and as part of the same sign, statement or other advertising medium, the total price, including all taxes, at which gasoline or motor vehicle fuel is being sold or offered for sale, designating the price for each brand or trade name of gasoline or motor vehicle fuel being sold or offered for sale.

The size of the letters, words, figures or numerals used for the purpose of indicating or showing the total price per gallon, including all taxes, shall be of a size as provided under the provisions of Section 20883 of this article.

(c) Nothing in this article shall be construed to apply to the price signs referred to in Article 6 of this chapter.

§ 20882. All letters, figures or numerals used in designating the brand name or words "no brand" in any advertising medium referred to in this article, shall be of uniform size and at least six inches in height and the height shall not be more than twice the dimension of the width of each such letter, figure or numeral.

§ 20883. All letters, words, figures or numerals used on the advertising medium referred to in this article for the purpose of indicating or showing prices of gasoline or other motor vehicle fuel sold or advertised for sale shall be uniform in size and shall be not more than twice the size of the letters, figures or numerals used to designate the brand name, or the words "no brand."

§ 20884. The advertising medium referred to in this article shall not contain any other advertising matter whatsoever except words of description of the product sold or offered for sale, and if words of description of the product offered for sale or advertised for sale by any such sign are used, the letters, figures or numerals which form any words, marks, letters, figures or numerals of description shall not be larger than the words, marks, letters, figures or numerals used in forming or designating the brand name or the words "no brand."

§ 20885. For the purpose of this article, fractions are considered one numeral.

§ 20886. The numeral one or the letter "1" need not conform to specifications prescribed for other letters, words, figures or numerals by this article but all letters, words, figures or numerals shall be the same type and design and shall be uniform with other letters, words, figures or numerals with which they are used.